

**Summary of Proposed Changes to the Michigan Juvenile Code Concerning  
Children in Foster Care  
Chief Justice Maura Corrigan and Justice Elizabeth Weaver  
Presented to the House and Senate Judiciary Committees  
June 22<sup>nd</sup>, 2004**

**Overview**

The federal Adoption and Safe Families Act (ASFA) was enacted in 1997 to promote children's safety, reunify families where appropriate, and promote permanent placements for foster children. These proposed amendments to Michigan's Juvenile Code would promote the same goals. In particular, the amendments are aimed at advancing permanent placements through meaningful legal representation of children in abuse and neglect cases. The proposed legislation also slightly modifies current legislation to more closely reflect federal requirements.

**MCL 712A.13a(1)(b)**

Would add a definition for "case file" as follows: "(1)(b) 'Agency Case File' means the current file from the agency providing direct services to the child, which can include the protective services file if the child has not been removed from the home, or the Family Independence Agency or contract agency foster care file as defined under 1973 PA 116, as amended." Lawyer Guardians Ad Litem (LGALs) report confusion about which file they are required to review before court hearings (see proposed change to MCL 712A.17d, below). This change would clarify that issue.

**MCL 712A.13a(1)(j)**

Would amend the definition of "relative" to include the parent of the child's putative father, where the child has no legal father. The amended definition would bring Michigan into line with federal law, expand the list of possible placements for the child, and advance the goal of keeping families intact. Only the grandparent, not the putative father, would be eligible as a possible placement. Again, the grandparent would be eligible only if the child has no legal father and if the court has determined that the putative father is the child's biological father. Such a determination, however, would be for placement purposes with his parent only and would not give the putative father any rights to the child or standing to intervene in the proceeding.

**MCL 712A.13a(1)(b)(3)**

Would give the Foster Care Review Board (FCRB) seven days to investigate a change in foster care placement and three days to report its findings to the court, where the foster parents appeal an agency's decision to remove the child from that placement. Such appeals go before the FCRB's review panels, which are made up of volunteers. The current statute gives the FCRB only three days to investigate the change and report its findings to the court. The three-day limit prevents the FCRB from conducting an adequate investigation. In addition, the agency lacks adequate time to conduct a license investigation, and protective services does not have enough

time to complete its own investigation. Moreover, in many cases, the agency withdraws the request to change the placement after the Family Independence Agency (FIA) has had an opportunity to investigate and address any issues. The additional time would allow many cases to be resolved in that manner without needlessly tying up the FCRB and court resources. This provision would not apply to emergency situations, in which the child could be removed as provided by the statute.

#### **MCL 712A.17d**

A proposed change to sec. 17d(1)(c) would make clear that LGALs are to review the agency case file “in preparation for disposition and termination of parental rights.” LGALs would also be required to review any updated materials provided to the court and parties before the hearing. In addition, this section spells out what documentation the supervising agency must provide to the LGAL “within five business days before the scheduled hearing.” This revision would allow the LGAL to prepare for the hearing with enough time and information to represent the child effectively.

Sec. 17d(1)(d) currently requires that the LGAL “meet with and observe the child” before each hearing. The proposed revision would retain the “meet with and observe” language, but would specify the hearings for which the LGAL is required to meet with the child, including a catch-all provision for “other times as ordered by the court.” The list in the revised section makes clear when it is essential for the LGAL to consult the child. The subsection also states that LGALs are not required to confer or visit the child a second time if the court adjourns a hearing. In addition, the proposed revision would permit the court to “allow alternative means of contact with the child” other than in-person meetings “if good cause is shown on the record.” For example, where the attorney would have to travel a significant distance to meet with the child, the court could permit the LGAL and the child to confer by telephone.

#### **MCL 712A.18(1)(b)**

This section permits the court to place a juvenile offender under supervision “in the home of an adult who is related to the juvenile.” This subsection would revise the definition of “related” to include “the parent of the child’s putative father, per judicial determination, provided there is no legal father,” to be consistent with MCL 712A.13a(1)(j), above. Again, the statute would be amended to permit the court to determine paternity in a child protection proceeding. The court’s finding of paternity, however, would not give the putative father standing in the proceeding, nor would the father be eligible as a placement.

#### **MCL 712A.19(3)**

Subsection 3 currently provides that the court must hold a review hearing not more than 91 days after the court enters the order of disposition. In addition, the court has a total of 98 days to entry of the disposition order (63 days from removal to trial and 35 days from trial to the initial disposition hearing) after the child’s removal.

Thus, it could take a court 189 days to hold the first review hearing. As a result, Michigan is potentially in conflict with ASFA, which calls for the first review hearing to be held not more than 182 days after the child has entered foster care. Indeed, the recent audit by Health and Human Services indicated that some hearings have been held past federal time limits. As a result, Michigan risks federal penalties, in the form of reduced federal aid for state foster care programs.

The revised subsection would track ASFA by requiring the court to hold a review hearing “not more than 91 days after the child has been removed and not more than every 91 days thereafter for the first year that the child remains under the court’s jurisdiction.” (The applicable court rule will need to be revised to schedule the initial disposition hearing for 28 days instead of 35 days after adjudication.) The permanency planning hearing would be conducted 273 days after the initial disposition hearing, which is one year after removal, in keeping with ASFA. As a result, there would be three review hearings within the first year following the child’s removal from the home. The 91-day requirement recognizes that the first year after removal presents the best opportunity for reuniting a family, and that frequent hearings are called for during that time.

After the first year, additional review hearings would be held at least once every 182 days while the child remains under the court’s jurisdiction as a temporary court ward.

It should be noted that nothing in these provisions would alter the court’s ability to hold hearings sooner than required. These proposed changes are consistent with federal law and would help Michigan avoid future federal penalties.

#### **MCL 712A.19a(1)**

This subsection currently requires courts to hold permanency planning hearings “within 1 year after an original petition has been filed.” The subsection would be revised to change the time frame to “12 months from the child’s removal,” which is easier to calculate and is consistent with federal requirements. Subsequent permanency hearings would be held “not less frequently than every 12 months during the continuation of foster care, regardless of other matters pending.” In addition, “A permanency planning hearing may be combined with a review hearing held under section 19(3) of this chapter, provided a review hearing is held at least every 182 days, regardless of other matters pending.” The proposed changes make clear that permanency planning hearings must not be cancelled or delayed even if there is a petition for permanent custody pending.

#### **MCL 712A.19a(2)**

This revision changes the time for a permanency planning hearing from the current 28 days to 30 days after the court finds that the parent abused the child or the child’s sibling. The new time frame is consistent with federal regulations.

#### **MCL 712A.19a(3)**

**Subsection a(3) would be deleted and replaced by subsection a(1) above.**

**MCL 712A.19c**

**An addition to this subsection would require the court to “conduct a hearing not more than 91 days after the termination of parental rights and at least every 182 days thereafter” for children in foster care. The subsection would also be revised to continue to require the court to hold the first permanency planning hearing within 12 months from the date that the child was originally removed from the home and subsequent permanency planning hearings within 12 months of the preceding hearing. The revised statute is consistent with federal requirements, which emphasize the need for permanency planning hearings, even if parental rights have been terminated. In addition, the 91-day requirement ensures that the child has an adoption worker assigned to and working on his or her case within three months of termination.**